TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~272~~ 8

A. T. STEWART, FRANCIS WARDER, AND GEORGE FOX, AS A. T. STEWART & CO., PLAINTIFFS IN ERROR,

vs.

S. BLOOM, S. KAHN, A. LEVI, AND S. ADLER, AS BLOOM, KAHN & CO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 14, 1869.

7.

SUPREME COURT OF THE UNITED STATES

No. 272.

A. T. STEWART, FRANCIS WARDER, AND GEORGE FOX, AS A. T. STEWART & CO., PLAINTIFFS IN ERROR,

vs.

S. BLOOM, S. KAHN, A. LEVI, AND S. ADLER, AS BLOOM, KAHN & CO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print.
Title of suit	1	1
Petition	2	1
Promissory note sued on	5	3
Protest thereof	6	3
Four citations	9	3
Return of citation to S. Kohn	10	3
Return of citation to S. Adler	11, 12	4
Return of citation to A. Levi	13	4
Return of citation to S. Bloom	14	5
Answer	15	5
Default, (minute)	16	5
Answer	17	5
Affidavit	18	6
Interrogatories	19	6
Notice to S. Kohn	21	7
Sheriff's return to notice	22	7
Citation to S. Kohn	23	7
Sheriff's return to citation	23, 24	7, 8
Continuances, (minutes)	24	8
Citation to Kohn	24, 25	8
Sheriff's return to citation	25	8
Rules of evidence	26	8
Testimony	26	8
Judgment	29	9
Rule for new trial, (minutes)	29	9
Sheriff's return to rule	29, 30	9, 10
Rule continued, (minutes)	30	10

due proceedings, judgment be rendered in favor of petitioners and against said S. Bloom, S. Kohn, A. Levi, and S. Adler, individually and in solido, for the full sum of three thousand two hundred and forty-one $^{44}/_{100}$ dollars, with legal interest on the same, to wit, on three thousand two hundred and twenty-six $^{44}/_{100}$ dollars, from March 13th, 1861, the date of protest, and on fifteen $^{00}/_{100}$ dollars, from August 11th, 1860, and costs of protest and costs of suit, and petitioners ask for
5 general relief; and, as in duty bound, will ever pray.

(Signed) LIVINGSTON & HERRMANN,
Att'ys for Petitioners.

Promissory note.—Annexed to and filed with petition.

$3,226 $^{44}/_{100}$. NEW YORK, *August* 10th, 1860.

Seven months after date we promise to pay to the order of A. T. Stewart & Co., thirty-two hundred and twenty-six $^{44}/_{100}$ dollars at the office of A. Levi & Co., New Orleans, value received, with c't rate of of exchange on New York. No. Due March, 10—13.

(Signed) BLOOM, KOHN & CO.,
55 *Carondelet.*

(Endorsed:)
Pay Merchants' Bank or order.

A. T. STEWART & CO.,
P'r GEO. B. BUTLER, *Att'y.*

Pay A. Montreuil, esq're, cash'r, or order.

J. D. VERMILYE, *Cash'r.*

6 *Protest.—Filed with and annexed to petition.*

STATE OF LOUISIANA, *City of New Orleans:*

By this public instrument of protest be it known that, on this thirteenth day of March, in the year one thousand eight hundred and sixty-one, at the request of A. Montreuil, esq'r, cashier of the Bank of Louisiana, holder of the original note, whereof a true copy is on the reverse thereof written, I, Felix Grima, a notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, by my deputy Charles F. Barry, presented said note to Messrs. A. Levi & Co., at their office, where the same is made payable, and demanded payment thereof, and was answered that no funds had been deposited there to pay the same.

7 Whereupon I, the said notary, at the request aforesaid, did protest, and, by these presents, do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges, and interest suffered, or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of Charles F. Barry and Manuel Pontigain, witnesses.

In testimony whereof, I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) FELIX GRIMA, *N. P.*

CHARLES F. BARRY.
MANUEL PONTIGAIN.

$3,226 14/100. NEW YORK, *August* 10th, 1860.

Seven months after date, we promise to pay to the order of A. T. Stewart & Co., thirty-two hundred twenty-six 14/100 dollars, at the
8 office of A. Levi & Co., New Orleans, value received, with c't rate of exchange on New York.

BLOOM, KOHN & CO.

(Endorsed:)
Pay Merchants' Bank, or order.

A. T. STEWART & CO.,
P'r GEO. B. BUTLER, *Att'y.*

Pay A. Montreuil, esqr., cash'r, or order.

J. D. VERMILYE, *Cash'r.*

I, the undersigned notary, do hereby certify that the parties to the note, whereof a true copy is embodied in the accompanying act of protest, have been duly notified of the protest thereof, by letter to them by me written and addressed, dated on the day of said protest, and served on them respectively in the manner following, viz:

By enclosing the one for the first endorsers in the one for J. D. Vermilye, cash'r, which I directed to him at New York, which said notices I deposited in the post office in this city, on the day of said protest, in time to go by the first mail thereafter. Postage prepaid.

9 In faith whereof, I hereunto sign my name, together with Charles F. Barry and Ernest Petitpain, witnesses, at New Orleans, this thirteenth day of March, eighteen hundred and sixty-one.

(Signed) FX GRIMA, *Not. Pub.*

CHAS. F. BARRY.
ER'ST PETITPAIN.

A true copy:
[SEAL.] FX GRIMA, *Not. Pub.*

4 citations.

State of Louisiana, fourth district court of New Orleans, in the city of New Orleans.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Mr. S. KOHN:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation,
10 or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans in ten days from the service hereof.

Witness the Honorable Paul E. Théard, judge of the said court, this 17th day of April, in the year of our Lord 1866.

[SEAL.] (Signed) E. O. SULLIVAN, *Dep'y Clerk.*

Sheriff's return to citation.—Filed April 19th, 1866.

Received, April 17th, 1866, and on the 18th of same month and year served a copy of within citation and accompanying petition, personally, on S. Kohn, defendant herein.

Returned same day.

(Signed) W. WALSH, *Dep'y Sh'ff.*

Sh'ff's fees $1 00.

11 State of Louisiana, fourth district court of New Orleans, in the city of New Orleans.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Mr. S. ADLER:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in ten days after the service hereof.

Witness the Honorable Paul R. Tidard, judge of the said court, the 17th day of April, in the year of our Lord 1866.

[SEAL.] (Signed) R. O. SULLIVAN, *Dep'y Clerk.*

Sheriff's return to citation.—Filed April 17th, 1866.

12 Received, April 17th, 1866, and on the 18th of same month and year served a copy of within citation and accompanying petition personally on S. Adler, defendant herein.

Returned same day.

(Signed) W. WALSH, *Dep'y Sh'ff.*

Sh'ff's fees, $1 00.

State of Louisiana, fourth district court of N. Orleans, in the city of New Orleans.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Mr. A. LEVI:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in ten days after the service thereof.

Witness the Honorable Paul R. Tidard, judge of the said court,

13 the 17th day of April, in the year of our Lord 1866.

[SEAL.] (Signed) R. O. SULLIVAN, *Dep'y Clerk.*

Sheriff's return to citation.—Filed April 19th, 1866.

Received, April 17th, 1866, and on the 18th of same month and year served a copy of within citation and accompanying petition personally on A. Levi, defendant herein.

Returned same day.

(Signed) W. WALSH, *Dep'y Sh'ff.*

Sh'ff's fees, $1 00.

State of Louisiana, fourth district court of N. Orleans, in the city of New Orleans.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

14 Mr. S. BLOOM:

You are hereby summoned to comply with the demand con-

tained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court of New Orleans, in ten days after the service hereof.

Witness the Honorable Paul H. Thézard, judge of the said court, the 17th day of April, in the year of our Lord 1868.

[SEAL.] (Signed) H. G. SULLIVAN, *Deputy Clerk.*

Sheriff's return to citation.—Filed April 18th, 1868.

Received, April 17th, 1868, and on the 18th of same month and year served a copy of within citation and accompanying petition personally on S. Bloom, defendant herein.

Returned same day.

15 (Signed) W. WALSH, *Dep'y Sh'ff.*

Sh'ff's fees, $1 00.

Answer.—Filed 23d April, 1868.

4th district court of N. Orleans.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Now into court comes A. Levi, made party defendant herein, and for answer says that he knows nothing about the correctness of the account sued on, nor of the note set forth in plaintiffs' petition, and pretended to have been given in liquidation and settlement of said account, nor of the consideration of said note; and defendant demands full proof of all the same, of all the several parts and items of said account, and of the execution and consideration of said pretended, and if there 16 exists any such note, and there be good and sufficient consideration therefor, then respondent pleads the prescription of five years thereto, and to said pretended account, if any exist to prevent the prescription of three and five years.

And your respondent prays judgment in his favor against said plaintiffs, and for all costs, and all further general and special relief.

(Signed) RAGE, FOSTER & H. T. MERRICK, *Attorneys.*

Default.

WEDNESDAY, 2nd

Present, Hon. Paul H. Thézard, judge.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

On motion of Livingston and Herrmann, of counsel for [illegible] on suggesting to the court that defendants Bloom, Ko[illegible] were duly cited on the 18th ultimo, and have failed [illegible] ordered that judgment by default be entered herein against [illegible]

17 *Answer.*

Filed 2nd May, 1868.

(Signed) J. H. COONEY, *Dep'y Clerk.*

11 State of Louisiana, fourth district court of New Orleans, in the city of New Orleans.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Mr. S. ADLER:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in ten days after the service hereof.

Witness the Honorable Paul E. Théard, judge of the said court, the 17th day of April, in the year of our Lord 1866.

[SEAL.] (Signed) E. O. SULLIVAN, *Dep'y Clerk.*

Sheriff's return to citation.—Filed April 17th, 1866.

12 Received, April 17th, 1866, and on the 18th of same month and year served a copy of within citation and accompanying petition personally on S. Adler, defendant herein.

Returned same day.

(Signed) W. WALSH, *Dep'y Sh'ff.*

Sh'ff's fees, $1 00.

State of Louisiana, fourth district court of N. Orleans, in the city of New Orleans.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Mr. A. LEVI:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in ten days after the service thereof.

Witness the Honorable Paul E. Théard, judge of the said court,

13 the 17th day of April, in the year of our Lord 1866.

[SEAL.] (Signed) E. O. SULLIVAN, *Dep'y Clerk.*

Sheriff's return to citation.—Filed April 19th, 1866.

Received, April 17th, 1866, and on the 18th of same month and year served a copy of within citation and accompanying petition personally on A. Levi, defendant herein.

Returned same day.

(Signed) W. WALSH, *Dep'y Sh'ff.*

Sh'ff's fees, $1 00.

State of Louisiana, fourth district court of N. Orleans, in the city of New Orleans.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

14 Mr. S. BLOOM:

You are hereby summoned to comply with the demand con-

tained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court of New Orleans, in ten days after the service hereof.

Witness the Honorable Paul R. Théard, judge of the said court, the 17th day of April, in the year of our Lord 1866.

[SEAL.] (Signed) R. O. SULLIVAN, *Deputy Clerk.*

Sheriff's return to citation.—Filed April 19th, 1866.

Received, April 17th, 1866, and on the 18th of same month and year served a copy of within citation and accompanying petition personally on S. Bloom, defendant herein.

Returned same day.

15 (Signed) W. WALSH, *Dep'y Sh'ff.*

Sh'ff's fees, $1 00.

Answer.—Filed 28th April, 1866.

4th district court of N. Orleans.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Now into court comes A. Levi, made party defendant herein, and for answer says that he knows nothing about the correctness of the account sued on, nor of the note set forth in plaintiffs' petition, and pretended to have been given in liquidation and settlement of said account, nor of the consideration of said note; and defendant demands full proof of all the same, of all the several parts and items of said account, and of the execution and consideration of said pretended, and if there

16 exists any such note, and there be good and sufficient consideration therefor, then respondent pleads the prescription of five years thereto, and to said pretended account, if any exist to prove, the prescription of three and five years.

And your respondent prays judgment in his favor against said plaintiffs, and for all costs, and all further general and special relief.

(Signed) RACE, FOSTER & R. T. MERRICK, *Attorneys.*

Default.

WEDNESDAY, 2nd *May*, 1866.

Present, Hon. Paul R. Théard, judge.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

On motion of Livingston and Heermann, of counsel for plaintiffs, and on suggesting to the court that defendants Bloom, Kohn, and Adler were duly cited on the 18th ultimo, and have failed to answer, it is ordered that judgment by default be entered herein against them.

17 *Answer.*

Filed 3rd May, 1866.

(Signed) J. M. COONEY, *Dep'y Clerk.*

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.—4th district court.

Now come S. Bloom, S. Kohn, and S. Adler, defendants in the above-entitled cause, and for answer to plaintiffs' petition say that they deny all and singular the allegations contained in said petition; and for further answer they say that the plaintiffs' claim is prescribed by five years.

Therefore they pray to be hence dismissed with costs and for general relief.

(Signed) R. W. HUNTINGTON, *Att'y.*

18 *Affidavit.*

4th district court of N. Orleans.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

The petition of the plaintiffs respectfully represents that the answers of S. Kohn, one of the defendants in the above-entitled cause, to the annexed interrogatories on facts and articles are material to the plaintiffs on the trial of the above cause. Wherefore, in consideration of the annexed affidavit, petitioners ask for an order of this honorable court directing S. Kohn to answer upon oath in open court said interrogatories, on Monday, the 21st inst., the day for which said cause is set for trial; and as in duty bound.

(Signed) LIVINGSTON & HEERMANN, *Attorneys for Pl'ffs.*

19 J. Livingston, attorney for plaintiffs, being duly sworn, say that the answers of S. Kohn, one of the defendants, to the annexed interrogatories on facts and articles are material, and that they are not propounded for the purpose of having them taken for confession.

(Signed) J. LIVINGSTON.

Sworn to and subscribed before me this 17th of May, 1860.

(Signed) J. DICK, *Dep'y Clerk.*

Interrogatories on facts and articles to be propounded to S. Kohn, and by him to be answered, upon oath, in open court, on Monday, the 21st inst.

1st. Interrogatory first. Were you in business as a merchant in Clinton, Louisiana, on the 10th August, 1860?

2d. Second. Were you one of the members of the commercial firm of Bloom, Kohn & Co.?

3d. Third. Was not that commercial firm composed of S. Bloom, S. Kohn, A. Levi, and S. Adler?

4th. Fourth. Was not the note annexed to plaintiffs' petition given in consideration of goods, wares, and merchandise purchased from plaintiffs.

5th. Fifth. Look at the account annexed to plaintiffs', and state how much of that account is embraced in said note.

6th. Sixth. For the amount of said account not embraced in said note is the commercial firm of Bloom, Kohn & Co. still indebted to the plaintiffs?

Let this supplemental petition be filed, and the defendant S. Kohn be ordered to answer, under oath, in open court, on Monday the 21st inst., at the trial of this case, the accompanying interrogatories.

New Orleans, May 17th, 1866.

(Signed) PAUL E. THÉARD, *Judge.*

21 *Notice.—Filed 21st May, 1866.*

State of Louisiana, fourth district court of N. Orleans.

To S KOHN:

You are hereby cited to declare, on oath, and also to answer in writing under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, on Monday, 24th inst., otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Honorable Paul E. Théard, judge of said court, this 18th day of May, in the year of our Lord 1866.

(Signed) GEO. W. WHITE, *Dep'y Clerk.*

A. T. STEWART & Co.
vs. } No. 17,104.
BLOOM, KOHN & Co.

22 *Sheriff's return.—Filed 21st May, 1866.*

Received, May 18th, 1866, and on the 21st of same month and year served a copy of within citation and accompanying interrogatories on S. Kohn, defendant herein, at his domicil, No. 207 Magazine street, by leaving the same in the hands of his wife, a person apparently over the age of 14 years and living in said domicil, whose name and other facts connected with this service I learned by interrogating her, the said defendant being absent from his domicil at time of said service.

Returned same day.

(Signed) W. WALSH, *Dep'y Sh'ff.*

Sh'ff's fees, $1 00.

Citation.—Filed May 23rd, 1866.

State of Louisiana, fourth district court of N. Orleans.

23 The State of Louisiana to S. Kohn:

You are hereby cited to declare on oath, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, on Monday, 4th June, otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Honorable Paul E. Théard, judge of said court, this 21st day of May, in the year of our Lord 1866.

(Signed) C. J. BEBENTISCH, *Dep'y Clerk.*

A. T. STEWART & Co.
vs. } No. 17,104.
BLOOM, KOHN & Co.

Sheriff's return.—Filed May 23rd, 1866.

24 Received, May 21st, 1866, and on the 22nd of same month and

[illegible] served a copy of within citation and accompanying supplemental petition and order and interrogatories personally on S. Kohn, defendant herein.

Returned same day.

(Signed) W. WALSH, *Dep'y Sh'ff.*

Sh'ff's fees, $1 00

Continuance from citation.

MONDAY, 21*st May*, 1866.

Present, Hon. Paul R. Théard, judge.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

This case was continued by preference.

Citation.

State of Louisiana, fourth district court of N. Orleans, in the city of New Orleans.

25 A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Mr. S. KOHN:

You are hereby cited to answer, under oath, in open court, on Monday, the 4th day of June, A. D. 1866, at 11 o'clock a. m., the accompanying interrogatories.

Witness the Honorable Paul R. Théard, judge of the said court, the 20th day of May, in the year of our Lord 1866.

(Signed) J. H. DICK, *Dep'y Clerk.*

Sheriff's return.—Filed May 30th, 1866.

Received, May 29th, 1866, and on the 29th of same month and year served a copy of within citation and accompanying interrogatories personally on S. Kohn, defendant herein.

Returned same day.

(Signed) W. WALSH, *Dep'y Sh'ff.*

26 *Note of evidence.—Filed 4th June, 1866.*

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Plaintiffs offer in evidence the note sued on and the protest thereof, (see pp. 6 & 7,) and annexed to the petition.

Testimony.—Filed 4th June, 1866.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

S. Kohn sworn to answer interrogatories on facts and articles:

To 1st. I was.
To 2nd. I was.
To 3rd. It was.
To 4th. I don't know, as I was not the purchaser. Our books
27 were destroyed some time ago.
To 5th. I make the same answer as to the 4th; I know nothing about it.
To 6th. I know nothing about it at all.

S. Newburger sworn for defendants:

I am and have been a resident of New Orleans about 25 years, and am acquainted with A. Levi, defendant, since 1854 or 1855.
He has resided in New Orleans all the time, and resided here all the time during the late war. He keeps house, and his family are here.
I was in his employ about 2 or 3 months in the summer of 1862. He was absent while I was in his employ some 4 or 5 weeks, but his family remained here all the time.

S. Relf sworn for defendants:

I am a resident of N. O., and have known Levi 8 or 9 years.
28 He has resided in New Orleans all that time.
I saw Levi every two or three days during the whole war in New Orleans.
He kept house, and has now his dwelling on Magazine street.

Judgment.

This day this cause came on for trial—Livingston & Heermann for plaintiffs, Race, Foster & Merrick, & Huntington, for defendants—when the court, considering the law, pleadings, evidence, and argument of counsel, ordered, adjudged, and decreed that there be judgment in favor of defendants, and against plaintiffs, for costs of suit.
Judgment rendered 4th June, 1866.
Judgment signed 23rd June, 1866.
(Signed) PAUL E. THÉA[illegible]

29 *Rule for new trial.—From minutes.*

Fourth district court.

TUESDAY, 5th [illegible]

Present, Hon. Paul E. Théard, judge.

A. T. STEWART & Co.
vs. } No. 17,104.
BLOOM, KOHN & Co.

On motion of Livingston & Heermann, of counsel for plaintiffs, it is ordered that the defendants show cause on Wednesday, the 13th instant, why a new trial should not be granted on the grounds that the judgment is not in accordance with the law and evidence; that the pendency of war suspended the operation of the law relating to prescription.

Sheriff's return.—Filed 8th June, 1866.

Received June 6th, 1866, and on the 7th day of the same month and

[illegible] served a copy of within citation and accompanying [illegible] petition and order and interrogatories personally on S. Kohn, defendant herein.

Returned same day.

(Signed) W. WALSH, *Dep'y Sh'f.*

Sh'f's fees, $1 00

Continuance from minutes.

MONDAY, 21*st May*, 1866.

Present, Hon. Paul R. Théard, judge.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

This case was continued by preference.

Citation.

State of Louisiana, fourth district court of N. Orleans, in the city of New Orleans.

25 A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Mr. S. KOHN:

You are hereby cited to answer, under oath, in open court, on Monday, the 4th day of June, A. D. 1866, at 11 o'clock a. m., the accompanying interrogatories.

Witness the Honorable Paul R. Théard, judge of the said court, the 20th day of May, in the year of our Lord 1866.

(Signed) J. H. DICK, *Dep'y Clerk.*

Sheriff's return.—Filed May 30th, 1866.

Received, May 20th, 1866, and on the 20th of same month and year served a copy of within citation and accompanying interrogatories personally on S. Kohn, defendant herein.

Returned same day.

(Signed) W. WALSH, *Dep'y Sh'f.*

26 *Notes of evidence.—Filed 4th June, 1866.*

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

Plaintiffs offer in evidence the note sued on and the protest thereof, (see pp. 6 & 7,) and annexed to the petition.

Testimony.—Filed 4th June, 1866.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

S. Kohn sworn to answer interrogatories on facts and articles:

To 1st. I was.
To 2nd. I was.
To 3rd. It was.
To 4th. I don't know, as I was not the purchaser. Our books
27 were destroyed some time ago.
To 5th. I make the same answer as to the 4th; I know nothing about it.
To 6th. I know nothing about it at all.

S. Newburger sworn for defendants:

I am and have been a resident of New Orleans about 25 years, and am acquainted with A. Levi, defendant, since 1854 or 1855.
He has resided in New Orleans all the time, and resided here all the time during the late war. He keeps house, and his family are here.
I was in his employ about 2 or 3 months in the summer of 1862. He was absent while I was in his employ some 4 or 5 weeks, but his family remained here all the time.

S. Relf sworn for defendants:

I am a resident of N. O., and have known Levi 8 or 9 years.
28 He has resided in New Orleans all that time.
I saw Levi every two or three days during the whole war in New Orleans.
He kept house, and has now his dwelling on Magazine street.

Judgment.

This day this cause came on for trial—Livingston & Heermann for plaintiffs, Race, Foster & Merrick, & Huntington, for defendants—when the court, considering the law, pleadings, evidence, and argument of counsel, ordered, adjudged, and decreed that there be judgment in favor of defendants, and against plaintiffs, for costs of suit.
Judgment rendered 4th June, 1866.
Judgment signed 23rd June, 1866.
(Signed) PAUL R. THÉARD, *Judge.*

29 *Rule for new trial.—From minutes.*

Fourth district court.

TUESDAY, 5th *June*, 1866.

Present, Hon. Paul R. Théard, judge.

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 17,104.

On motion of Livingston & Heermann, of counsel for plaintiffs, it is ordered that the defendants show cause on Wednesday, the 13th instant, why a new trial should not be granted on the grounds that the judgment is not in accordance with the law and evidence; that the proclamation of war suspended the operation of the law relative to prescription.

Sheriff's return.—Filed 6th June, 1866.

Received June 6th, 1866, and on the 7th day of the same month and

30 year served copy of the within rule and copy on Mr. Rose, esq., personally.
Returned same day.
(Signed) G. ROBERT, *Dep'y Sh'ff.*
Sh'ff's fees, $ 50 cts.

Rule continued.

WEDNESDAY, 13th *June*, 1866.

Present, Hon. Paul E. Théard, judge.

A. T. STEWART & Co.
vs. } No. 17,104.
BLOOM, KOHN & Co.

The rule in this case, fixed for hearing this day, is ordered to be continued to Saturday, the 16th instant.

Rule continued.

SATURDAY, 16th *June*, 1866.

Present, Hon. Paul E. Théard, judge.

A. T. STEWART & Co.
vs. } No. 17,104.
BLOOM, KOHN & Co.

The rule for a new trial in this case was ordered to be continued
31 to Friday next, the 22nd instant.

Rule dismissed.

FRIDAY, 22nd *June*, 1866.

Present, Hon. Paul E. Théard, judge.

A. T. STEWART & Co.
vs. } No. 17,104.
BLOOM, KOHN & Co.

The rule for a new trial in this case came on this day for hearing, when the court, considering the law to be in favor of defendants, ordered said rule be discharged and a new trial refused.

Motion and order.—Filed June 30th, 1866.

Fourth district court.

A. T. STEWART, & Co.
vs. } No. 17,104.
S. BLOOM, S. KOHN, A. LEVI, S. ADLER, et al.

32 On motion of J. Livingston, atty for plaintiffs, and upon stating that the plaintiffs believe themselves to have been aggrieved by the judgment rendered against them, and upon giving bond in the penal sum of two hundred dollars, with T. G. Martin & Co., a good and solvent security, [illegible] it is ordered that an appeal be [illegible]

Bond.—Filed June 30th, 1866.

Know all men by these presents, that we, Alexander T. Stewart & Co., principals, and F. G. Barrin & Co., of New Orleans, are held and firmly bound unto S. Bloom, S. Kohn, A. Levi, and S. Adler, and their executors, administrators, and assigns, in the sum of two hundred dollars; for the payment whereof, we bind ourselves, our heirs, executors, and
33 administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on the 26th day of June, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-bounden A. T. Stewart & Co. this day filed a petition of appeal from a final judgment rendered against them in the suit of A. T. Stewart & Co. vs. Bloom, Kohn & Co., in the fourth district court of New Orleans, on the 23rd day of June, 1866:

Now, the condition of the above obligation is such, that the above-bound A. T. Stewart & Co. shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said F. G. Barrin & Co., surety, shall be liable in their place.

(Signed) A. T. STEWART & CO.,
Per J. LIVINGSTON, *Att'y.* [L. S.]
F. G. BARRIN & CO. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) J. DONOCOURT.

34 *Clerk's certificate.*

State of Louisiana, fourth district court of New Orleans.

I hereby certify that the foregoing (33) thirty-three pages contain a full and complete transcript of all the proceedings, as well as of all the documents filed and evidence adduced in the cause wherein A. T. Stewart & Co. are plaintiffs, and Bloom, Kohn & Co. are defendants, instituted in this court, and now on the records thereof, under the No. 17,102.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this fifth day of November, in the year of our Lord one thousand eight hundred and sixty-six, and in the ninety-first year of the independence of the United States.

[L. S.] (Signed) RICH. C. BOND, *Clerk.*

35 Supreme court of the State of Louisiana.

Extract from the docket, November 11th, 1867.

A. T. STEWART & Co. } No. 1072.
vs.
BLOOM, KOHN & Co. }

Called; fixed for Wednesday, 27th Nov'er, 1869.

Supreme court of the State of Louisiana.

Extract from the minutes.

WEDNESDAY, 27th *November*, 1867.

The court met—present, their honors Hon. W. R. Hyman, chief justice; Simon Labauve, John H. Rogers, Rufus K. Howell, and Thomas

A. T. Stewart & Co. vs. Bloom, Kohn & Co. } No. 1072.

Continued.

Supreme court of the State of Louisiana.

Extract from the minutes.

Tuesday, *December 3rd*, 1867.

36 The court met.
Present, their honors W. B. Hyman, chief justice.
Rezen Labauve, ass'e "
John H. Ilsley, " "
Rufus K. Howell, " "

A. T. Stewart & Co. vs. Bloom, Kohn & Co. } No. 1072.

Appeal from the 4th district court of N. Orleans.

On motion of J. Livingston, atty for plaintiffs and appellants, and upon suggesting to the court that, owing to unavoidable absence, the briefs for plaintiffs and appellants were not filed within the time fixed by rule 8 of this hon. court, and upon further stating no briefs were filed by the counsel for defendants, it is ordered by the court that Messrs. Race, Foster, and R. T. Merrick, counsels for one of the defendants, and J. W. Huntington, esq'r, of counsel for the three other defendants, do show cause, on Tuesday next, the 10th December, 1867, why the above-entitled cause should not be submitted upon the trial docket and called at the next calling of cases.

37 Supreme court of La.

Extract from the minutes, Tuesday, December 10th, 1867.

The court met.
Present, their honors Wm. B. Hyman, chief justice.
Rezen Labauve, ass'e "
John H. Ilsley, " "
Rufus K. Howell, " "

A. T. Stewart & Co. vs. Bloom, Kohn & Co. } No. 1072.

This case was this day called, on a rule taken against the defendants; was ordered by the court to be continued.

Supreme court of La.

Extract from the docket, March 25th, 1868.

Called; fixed for Tuesday, April 14th, 1868.

Supreme court of La.

Extract from the minutes, Tuesday, April 12th, 1869.

The court was duly opened; present, their Honors John T. Ludeling, chief justice; James G. Taliaferro, Edw. K. Howell, W. G. Wyly, Wm. W. Howe, associate justices;

A. T. STEWART & Co. } No. 1072.
vs.
BLOOM, KOHN & Co. }

This case was called for trial, whereupon the same was submitted to the court, by written consent of counsel for both parties, upon the briefs now on file for appellants and appellees.

Supreme court of La.

A. T. STEWART & Co. } No. 1072.
vs.
BLOOM, KOHN & Co. }

Brief in behalf of plaintiffs.

Filed April 1st, 1869.
(Signed) M. P. JULIAN, *Dep'y Clerk.*

This is an action upon a promissory note. The only defence is the plea of prescription.

The note fell due and was protested on the 13th of March, 1861. (Rec., p. 6.)

Citation in the suit was served on the 19th of April, 1865. (R., pp. 9, 11, 12, & 13.)

It will be thus seen that the time for prescription had expired about a month before the suit was brought.

The plaintiffs rely upon an interruption of prescription during the greater portion of the five years.

The domicil of defendants' firm was in Clinton, Louisiana. (See Pet., Record, p. 4. Evidence of Kohn, p. 26.)

Clinton was within the confederate lines during the whole war.

The plaintiffs could not sue them there; in fact, were prohibited from bringing suit, or holding any intercourse with the defendants, by repeated proclamations of the President of the United States.

Even New Orleans was not under federal authority until May 1st, 1862.

More than one year had elapsed, during which prescription was suspended as to all the defendants, whether they lived in Clinton or New Orleans.

The act of Congress of June 11th, 1864, p. 152, Acts, is conclusive upon this point. It enacts:

"That whenever, during the existence of the present rebellion, any action, civil or criminal, shall accrue against any person who, by reason of adherence to the enemies of the United States, or the interruption of the ordinary course of judicial proceedings,

A. T. Stewart & Co. vs. Bloom, Kohn & Co. } No. 1072.

Continued.

Supreme court of the State of Louisiana.

Extract from the minutes.

Tuesday, *December* 3rd, 1867.

36 The court met.
Present, their honors W. B. Hyman, chief justice.
Zenon Labauve, ass'e "
John H. Ilsley, " "
Rufus K. Howell, " "

A. T. Stewart & Co. vs. Bloom, Kohn & Co. } No. 1072.

Appeal from the 4th district court of N. Orleans.

On motion of J. Livingston, att'y for plaintiffs and appellants, and upon suggesting to the court that, owing to unavoidable absence, the briefs for plaintiffs and appellants were not filed within the time fixed by rule 3 of this hon. court, and upon further stating no briefs were filed by the counsel for defendants, it is ordered by the court that Messrs. Race, Foster, and R. T. Merrick, counsels for one of the defendants, and J. W. Huntington, esq'r, of counsel for the three other defendants, do show cause, on Tuesday next, the 10th December, 1867, why the above-entitled cause should not be reinstated upon the trial docket and called at the next calling of cases.

37 Supreme court of La.

Extract from the minutes, Tuesday, December 10th, 1867.

The court met.
Present, their honors Wm. B. Hyman, chief justice.
Zenon Labauve, ass'e "
John H. Ilsley, " "
Rufus K. Howell, " "

A. T. Stewart & Co. vs. Bloom, Kohn & Co. } No. 1072.

This case was this day called, on a rule taken against the defendants; was ordered by the court to be continued.

Supreme court of La.

Extract from the docket, March 20th, 1869.

Called; fixed for Tuesday, April 13th, 1869.

Supreme court of La.

Extract from the minutes, Tuesday, April 12th, 1869.

The court was duly opened; present, their Honors John T.
38 Ludeling, chief justice; James G. Taliaferro, Edm. E. Howell, W. G. Wyly, Wm. W. Howe, associate justices;

A. T. Stewart & Co. } No. 1072.
vs.
Bloom, Kohn & Co. }

This case was called for trial, whereupon the same was submitted to the court, by written consent of counsel for both parties, upon the briefs now on file for appellants and appellees.

Supreme court of La.

A. T. Stewart & Co. } No. 1072.
vs.
Bloom, Kohn & Co. }

Brief in behalf of plaintiffs.

Filed April 1st, 1869.
(Signed) M. P. JULIAN, *Dep'y Clerk.*

This is an action upon a promissory note. The only defence is the plea of prescription.

The note fell due and was protested on the 13th of March, 1861. (Rec., p. 6.)

39 Citation in the suit was served on the 18th of April, 1868. (R., pp. 9, 11, 12, & 13.)

It will be thus seen that the time for prescription had expired about a month before the suit was brought.

The plaintiffs rely upon an interruption of prescription during the greater portion of the five years.

The domicil of defendants' firm was in Clinton, Louisiana. (See Pet., Record, p. 4. Evidence of Kohn, p. 26.)

Clinton was within the confederate lines during the whole war.

The plaintiffs could not sue them there; in fact, were prohibited from bringing suit, or holding any intercourse with the defendants, by repeated proclamations of the President of the United States.

Even New Orleans was not under federal authority until May 1st, 1862.

More than one year had elapsed, during which prescription was suspended as to all the defendants, whether they lived in Clinton or New Orleans.

The act of Congress of June 11th, 1864, p. 123, Acts, is conclusive upon the point. It enacts:

40 "That whenever, during the existence of the present rebellion, any action, civil or criminal, shall accrue against any person who by reason of resistance to the execution of the laws of the United States, or the interruption of the ordinary course of judicial proceedings,

served with process for the commencement of such action or such process, or whenever, after such action, civil or criminal, is asserted, such process cannot by reason of such resistance of the laws, or such interruption of judicial proceedings, be served with process for the commencement of the action, the time during which such person shall be beyond the reach of judicial process shall not be deemed or taken as any part of the time limited by law for the commencement of such action."

That the laws of the United States were resisted, and the execution of them obstructed, and judicial proceedings interrupted. See proclamation of President Lincoln, April 15th, 1861. (12 L. & B., Laws of U. S., p. 1258.)

41 Also proclamation of August 16th, 1861, (12 L. & B., p. 1262,) prohibiting all intercourse with people of Louisiana.

See also proclamations of July 1st, 1862, January 1st, 1863, and April 2nd, 1863. (12 L. & B., Statutes, pp. 1262, [1262,] 1266, 1268, and April 2nd, 1863.)

Independent of the above express legislation, prescription was suspended during the war. (Wheaton's, pp. 541, 542; 1 Kent, pp. 67, 68; 18 Johnson, R., p. 213; Wall vs. Robson; 2 Nott & McCord, 496.)

Plaintiffs are entitled to judgment for the amount claimed.

All of which is respectfully submitted.

(Signed) KILMORE & KING,
Att'ys for Plaintiffs.

Supreme court of the State of Louisiana.

Extract from the minutes.

MONDAY, *April* 19th, 1869.

The court was duly opened pursuant to adjournment.

Present, their honors John T. Ludeling, chief justice; and
42 James G. Taliaferro, Rufus K. Howell, W. G. Wyly, Wm. W. Howe, associate justices.

His honor the chief justice pronounced the judgment and decree in the following case:

A. T. STEWART & Co. } No. 1072.
vs.
BLOOM, KOHN & Co. }

On appeal from the 4th district court of New Orleans.

This is an action upon a promissory note.

The defendants pleaded the prescription of five years.

The note fell due on the 13th March, 1861, and the citations were served on the defendants on the 16th day of April, 1866.

More than five years having elapsed after the maturity of the note, before the citations were served on the defendants, the plea of prescription must be sustained. (C. C., 3504, 3505; Baird vs. Pourciau, 20 an., 121; and Smith vs. Stewart, 21 an.)

43 It is therefore ordered, adjudged, and decreed that the judgment of the lower court be affirmed, and that the appellants pay the costs of the appeal.

Supreme court of the State of Louisiana.

Extract from the docket.

Petition for rehearing; filed April 28th, 1869.
(Signed) M. P. JULIAN, *Dep'y Clerk.*

To the hon. the supreme court of the State of Louisiana:

The plaintiffs in the case of A. T. Stewart & Co. vs. Bloom, Kahn & Co., decided on Monday, the 19th inst., present the following petition for a rehearing, in which they respectfully represent—

That they mainly relied upon the act of Congress entitled "An act in relation to the limitation of certain actions," approved June 11th, 1864, as a complete answer to the plea of prescription set up by the defendants.

44 Petitioners allege that, according to the provisions of this act, prescription was suspended on the cause of action declared on, in the suit for a sufficient time to have prevented the discharge of the defendants on the plea of prescription.

That under the laws of Louisiana the plaintiffs had the right to urge that defence to the plea of prescription, without any special answer in writing to said plea being filed.

Plaintiffs allege that in the printed briefs filed in the case before the trial thereof, they did set forth the said act of Congress, and claimed the benefit of its provisions, under which the plea of prescription could not have been maintained.

That disregarding the said act of Congress, and contrary to its provisions, this hon. court sustained the plea of prescription without any notice whatever of the said act of Congress. That, in consequence of this decision, the plaintiffs have been deprived of a debt, which the said act of Congress was intended to secure to them.

Petitioners pray the court to consider the said act of Congress, 45 to accord to them the benefits of said act, and that a rehearing be granted in the case, and that judgment be rendered in this case overruling the plea of prescription urged by the defendants, and in favor of the plaintiffs, as prayed for in the original petition filed in the case, and reversing the judgment of the district court, &c., &c.

(Signed) ELMORE & KING,
Att'ys for Plaintiffs.

Supreme court of the State of Louisiana.

Extract from the minutes.

MONDAY, *May* 10th, 1869.

The court was duly opened pursuant to adjournment.
Present, their honors John T. Ludeling, chief justice.
James G. Taliaferro, asso'e "
Rufus K. Howell, " "
W. G. Wyly, " "
Wm. W. Howe, " "

His honor the chief justice pronounced the judgment and decree in the following cases:

A. T. STEWART & Co. vs. BLOOM, KOHN & Co. } No. 1072.

46 It is ordered that the rehearing applied for in this case be refused.

Petition for writ of error.

To the Hon. Noah H. Swayne, one of the justices of the Supreme Court of the United States:

The petition of A. T. Stewart, who resides in New York, and Francis Warder, who resides also in New York, and George Fox, also residing in New York, and who composed the late firm of A. T. Stewart & Co., who did commercial business in the said city of New York, respectfully represents—

That in the suit of the said A. T. Stewart & Co. against S. Bloom, S. Kohn, A. Levi, and E. Adler, who reside in the State of Louisiana, and compose the commercial firm of Bloom, Kohn & Co., formed and doing business at Clinton, in the parish of East Feliciana, in the said State of Louisiana, the supreme court of the State of Louisiana rendered

47 judgment against the petitioners on the 10th day of April, 1869, and on the 10th day of May, 1869, overruled the petition for rehearing filed in the case, thereby rendering the said judgment final on this day.

That the said supreme court of the State sustained a plea of prescription which had been set up by the said defendants, in defence of the action.

That the petitioners claimed in said suit an exemption from the operation of the laws of the State of Louisiana upon the subject of prescription during the late rebellion, under and by virtue of the act of Congress entitled "An act in relation to the limitation of certain actions," approved June the 11th, 1864.

That the said supreme court of the State, under the facts of the case, (the defendants having been residents of one of the States in rebellion, and the plaintiffs residing in New York,) could not have entertained jurisdiction of the said suit, except by a violation of the rights secured to the petitioners, created by and under the said act of Congress.

That they have been illegally deprived of a right secured to

48 them by the said act of Congress, which was specially set up and urged by them before the said supreme court of the State.

The petitioners allege there was manifest error in the said decision of the supreme court of the State of Louisiana, and will work to them irreparable injury unless they can be relieved therefrom by a writ of error to the Supreme Court of the United States.

Wherefore petitioners respectfully pray that a writ of error may be issued to [illegible] the Supreme Court of the United States, [illegible] and that the said judgment may be reversed, and for all other relief in the premises.

(Signed) BLOOMER & KING, *Attys for Petrs.*

Supreme court of La.

Filed May [illegible], 1869.

(Signed) M. E. JULIAN, *Dep'y Clerk.*

49 *Writ of error.*

Let a writ of error from the judgment rendered by the supreme court of the State of Louisiana in the case of A. T. Stewart, Francis Wrenshall, and George Fox, composing the commercial firm of A. T. Stewart & Co., against S. Bloom, S. Kohn, A. Levi, and S. Adler, composing the commercial firm of Bloom, Kohn & Co., be granted as prayed for in the annexed petition, upon the petitioners and plaintiffs in error giving bond, with good and sufficient security, for the sum of five hundred dollars, conditioned as the law directs; that the said writ be returnable to the Supreme Court of the United States on the first Monday in December next; and that the defendants in error, said Bloom, Kohn & Co., be duly cited to answer the same.

May 29th, 1869.

(Signed) E. H. EWAYER,
Associate Justice Sup. Court U. S.

Filed May 29th, 1869.

(Signed) M. P. JULIAN, *Dep'y Clerk.*

50 *Bond.*

Know all men by these presents, that we, A. T. Stewart & Co., as principals, and Richd A. Venables, as surety, are held and firmly bound unto S. Bloom, S. Kohn, A. Levi, and S. Adler, composing the firm of Bloom, Kohn & Co., in the full and just sum of five hundred dollars, to be paid to the said Bloom, Kohn & Co., their certain [illegible] executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, and each, [illegible] and severally, by these presents. Sealed with our seals, and dated this [illegible] day of May, in the year of our Lord one thousand [illegible] and sixty-nine.

Whereas lately in the supreme court of the State of [illegible] ing sessions in New Orleans, in a suit depending in said court between A. T. Stewart & Co. [illegible] and Bloom, Kohn & Co. [illegible] suits, judgment was rendered against the said A. T. Stewart & Co. [illegible]

51 A. T. Stewart & Co. [illegible] every [illegible] of the said judgment, and [illegible] the said Bloom, Kohn & Co. [illegible] at a Supreme Court of the United States, to be holden at [illegible] the first Monday of December next:

Now, the condition of the above obligation is such, that if the said A. T. Stewart & Co. shall prosecute their writ to effect and answer all damages and costs if they fail to make their plea [illegible] and shall abide by and perform the judgment given [illegible] then the above obligation to be void; else to remain in full force and virtue.

(Signed) A. T. STEWART & CO.
Per [illegible]

(Signed) RICHD A. VENABLES, [illegible]

Bond approved.

(Signed) E. H. EWAYER, Judge
Supreme court of La.

Filed May 29th, 1869.

(Signed) M. P. JULIAN, *Dep'y Clerk.*

UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the Supreme Court of the State of Louisiana, and holding sessions in the city of New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or [illegible] between A. T. Stewart & Co., plaintiffs in error, and Bloom, Kahn & Co., wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, or laws of the United States, and the decision was in favor of such validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said A. T. Stewart & Co., a commercial firm, composed of A. T. Stewart, Francis Winslow, & Cornelius Fox, and in favor of S. Bloom, S. Kahn, A. Levi, & S. Adler, composing the said commercial firm of Bloom, Kahn & Co., as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 26th of May, in the year of our Lord one thousand eight hundred and sixty-nine.

D. URBAN,
[SEAL.] *Clerk of the United States Circuit Court for District of Louisiana.*

Citation.

UNITED STATES OF AMERICA, *State of Louisiana:*

The President of the United States of America to Bloom, Kahn & Co., (S. Bloom, S. Kahn, A. Levi, and S. Adler,) greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Louisiana, holding sessions at New Orleans, wherein A. T. Stewart & Co. are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ

of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.
Witness my hand and seal this the 29th day of June, A. D. 1869.
(Signed) N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

Supreme court of La.

Filed August 3rd, 1869.
(Signed) M. P. JULIAN,
Dep'y Clerk.

UNITED STATES OF AMERICA, *State of Louisiana:*
The President of the United States of America to S. Adler, greeting:
You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New Orleans, wherein A. T. Stewart & Co. are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.
Witness my hand and seal this the 29th June, A. D. 1869.
(Signed) N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

A true copy:
[SEAL.] M. P. JULIAN,
Dep'y Clerk Sup. Court State of La.

Sheriff's return.

Received, July 9th, 1869, and on the 2nd of August, 1869, served a copy of the within citation on S. Adler, defendant in error, through R. W. Huntington, attorney for defendant in error, personally, said defendant in error being an absentee.
Returned same day.
(Signed) GEO. H. TARDY,
Dep'y Sh'ff Parish of Orleans.

Geo. H. Tardy, dep'y sh'ff, being duly sworn, deposes that all the facts and allegations above stated are true and correct.
(Signed) GEO. H. TARDY, *Dep'y Sh'ff.*

Sworn to and subscribed before me this the 3rd day of August, A. D. 1869.
[SEAL.] (Signed) M. P. JULIAN,
Dep'y Clerk Sup. Court State of La.

Supreme court of La.

Filed August 3rd, 1869.
M. P. JULIAN, *Dep'y Clerk.*

UNITED STATES OF AMERICA, *State of Louisiana*:

The President of the United States of America to S. Bloom, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New Orleans, wherein A. T. Stewart & Co. are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this the 30th day of June, anno Domini 1858.

(Signed) E. H. EWAYER,
Asst. Jus. Sup. Court U. S.

A true copy:
[SEAL.] M. P. JULIAN,
Dep'y Clerk Sup. Court State of La.

Sheriff's return.

Received July 9th, 1858, and on the 17th day of the same month and year, served copy of within citation on S. Bloom, defendant in error, by leaving the same at his domicil, No. 177 Ludgerville street, in the hands of John Johnson, a colored person, above 14 years of age, living and residing in the same domicil, the said Bloom being absent from home at the time (if still service) all of which particulars connected with this service I learned by interrogating the said Johnson.

Returned same day.

(Signed) PEPE LACOSTE, *Dep'y Sheriff.*

Philippe Lacoste, dep'y sh'ff, being duly sworn, deposes that all the facts and allegations above stated are true and correct.

(Signed) PEPE LACOSTE, *Dep'y Sh'ff.*

Sworn to and subscribed before me this the 15th day of September, A. D. 1858.

[SEAL.] (Signed) M. P. JULIAN,
Dep'y Clerk Sup. Court State of La.

Supreme court of La.

Filed Sept. 16th, 1858. M. P. JULIAN, *Dep'y Clerk.*

UNITED STATES OF AMERICA, *State of Louisiana*:

The President of the United States of America to S. Kahn, greeting:

You are hereby cited and admonished to be and appear at Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New

Orleans, wherein A. T. Stewart & Co. are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of
60 error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this the 29th day of June, A. D. 1860.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

A true copy:
[SEAL.] (Signed) M. P. JULIAN,
Dep'y Clerk Sup. Court State of La.

Sheriff's return.

Received July 9th, 1860, and on the 13th day of the same month and year served copy of the within notice on S. Kohn, one of the defendants in error, by leaving the same at his domicil, No. 20 Baronne street, in the hands of Mrs. Mary Izard, a white person, above 14 years of age, living and residing in the same domicil, the said Kohn being absent from home at the time of said service; all of which particulars connected with this service I learned by interrogating the said Mrs. Mary Izard.

Returned same day.

61 (Signed) PHYE LACOSTE, *Dep'y Sheriff.*

Philippe Lacoste, dep'y sh'ff, being duly sworn, deposes that all the facts and allegations above stated are true and correct.

(Signed) PHYE LACOSTE, *Dep'y Sh'ff.*

Sworn to and subscribed before me this the 13th day of September, A. D. 1860.

[SEAL.] (Signed) M. P. JULIAN,
Dep'y Clerk Sup. Court.

Supreme court of La.

Filed Sept'er 18th, 1860.

M. P. JULIAN, *Dep'y Clerk.*

THE UNITED STATES OF AMERICA, *State of Louisiana:*

The President of the United States of America to A. Levi, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the
62 city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New Orleans, wherein A. T. Stewart & Co. are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this the 29th day of June, A. D. 1860.

(Signed) N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

A true copy:
[SEAL.] M. P. JULIAN,
Dep'y Clerk Sup. Court State of La.

Sheriff's return.

63 Received July 9th, 1860, and on the 12th day of the same month and year served copy of the within citation personally on A. Levi, one of the defendants in error herein.

Returned same day.

(Signed) PHPE LACOSTE, *Dep'y Sh'f.*

Philippe Lacoste, dep'y sheriff, being duly sworn, deposes that all the facts and allegations above stated are true and correct.

(Signed) PH. LACOSTE, *Dep'y Sh'f.*

Sworn to and subscribed before me this the 15th day of September, 1860.

[SEAL.] (Signed) M. P. JULIAN,
Dep'y Clerk Sup. Court.

Supreme court of La.

Filed September 16th, 1860.

M. P. JULIAN, *Dep'y Clerk.*

Clerk's certificate.

UNITED STATES OF AMERICA, *Supreme Court State of La.:*

64 I, John F. Duane, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing sixty-three pages contain a true copy of the transcript of the proceedings had in the fourth district court for the parish of Orleans, in a certain suit wherein A. T. Stewart & Co. were plaintiffs, and Bloom, Kohn & Co. were defendants; and also of the proceedings had in this supreme court on the appeal taken by said plaintiffs, which appeal is now on the files thereof under No. 1072.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this the 17th day of September, anno Domini eighteen hundred and sixty-nine, and in the ninety-fourth year of the independence of the United States of America.

[SEAL.] JOHN F. DUANE,
Cl'k Supreme Court La.

65 UNITED STATES OF AMERICA,
State of Louisiana:

The President of the United States of America to S. Bloom, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New Orleans, wherein A. T. Stewart & Co. are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this the 20th day of June, A. D. 1860.

[SEAL.] (Signed) S. H. [illegible]
Judge [illegible] Dist. U. S.

A true copy:

M. P. JULIAN,
Deputy Clerk.

For return.

66 Received July 9th, 1869, and on the 17th day of the same month and year served copy of the within citation on S. Bloom, defendant in error, by leaving the same at his domicil, No. 177 Lafayette street, in the hands of John Johnson, a colored person, above 14 years of age, living and residing in the same domicil, the said Bloom being absent from home at the time of said service; all of which particulars connected with this service I learned by interrogating the said Johnson. Ret. same day.

PHI. LACOSTE, *D'y Sh'ff.*

Sh'ff's fees, 50 cts.
Mil., 10 "

Philippe Lacoste, dep'y sh'ff, being duly sworn, deposes that all the facts and allegations above stated are true and correct.

PHI. LACOSTE, *D'y Sh'ff.*

Sworn to and subscribed before me this the 15th day of September, A. D. 1869.

[SEAL.]

M. P. JULIAN,
Dep'y Clerk Sup. Court.

Sup. court of La.

Filed Sept. 16th, 1869.

M. P. JULIAN, *Dep'y Clerk.*

67 UNITED STATES OF AMERICA,
State of Louisiana:

The President of the United States of America to S. Kohn, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New Orleans, wherein A. T. Stewart & Co. are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this the 20th day of June, A. D. 1869.

[SEAL.] (Signed) N. H. SWAYNE,
Ass. Jus. Sup. Court U. S.

A true copy:

M. P. JULIAN, *Dep'y Clerk.*

68 (Indorsed:) R. 4 dist. court of N. O. 17,104.

For return.

Received July 8, 1859, and on the 13th day of the same month and year served copy of the within notice on S. Kohn, one of the defendants in error, by leaving the same at his domicil, No. 29 Bagatelle street, in the hands of Mrs. Mary Izard, a white person, above 14 years of age, living and residing in the same domicil, the said Kohn being absent from home at the time of said service; all of which particulars connected with this service I learned by interrogating the said Mrs. Mary Izard.

Dist. same day.

PHIL. LACOSTE, *D'y Sh'ff.*

Sh'ff's fees, 50 c'ts; mil., 10.

Philippe Lacoste, dep'y sh'ff, being duly sworn, deposes that all the facts and allegations above stated are true and correct.

PHIL. LACOSTE, *D'y Sh'ff.*

Sworn to and subscribed before me this the 15th day of September, A. D. 1859.

[SEAL.] M. P. JULIAN,
Dep'y Clerk Sup. Court.

Supreme court of La.

Filed Sept. 16th, 1859.

M. P. JULIAN, *Dep'y Clerk.*

69 UNITED STATES OF AMERICA,
State of Louisiana:

The President of the United States of America to A. Levi, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New Orleans, wherein A. T. Stewart & Co. are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this the 28th day of June, A. D. 1859.

[SEAL.] (Signed) E. H. SWAYNE,
Asso. Jus. Sup. Court.

U. S.

A true copy:

M. P. JULIAN, *Deputy Clerk.*

70 (Indorsed:) R. 4 D. C. of E. C. 17,164.

For return.

Received July 9th, 1859, and, on the twelfth day of the same month & year, served copy of the within citation personally on A. Levi, one of the defendants in error herein.

Dist. same day.

PHIL. LACOSTE, *D'y Sh'ff.*

[illegible] 50; mil., 10.

Sup. court of La.

Filed Sept. 16th, 1869.

M. P. JULIAN, *Dep'y Clerk.*

Phi. Lacoste, dep'y sh'ff, being duly sworn, deposes that all the facts and allegations above stated are true and correct.

PHI. LACOSTE, *D'y Sh'ff.*

Sworn to and subscribed before me this the 15th day of September, 1869.

[SEAL.]

M. P. JULIAN,
Dep'y Clerk Sup. Court.

71 UNITED STATES OF AMERICA,
State of Louisiana:

The President of the United States of America to S. Adler, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New Orleans, wherein A. T. Stewart & Co. are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this the 29th June, A. D. 1869.

[SEAL.] (Signed) N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

A true copy:

M. P. JULIAN, *Deputy Clerk.*

72 (Indorsed:) R. 4 D. C. of N. O. 17,104.

For return.

Received July 9, 1869, and on the 2d of August, 1869, served a copy the within citation on S. Adler, defendant in error, through E. W. Huntington, attorney for defendant in error, personally, said defendant in error being an absentee.

Ret'd same day.

GEO. H. TARDY,
D'y Sh'ff Parish of Orleans.

Sh'ff's fees, 50 cts.; m., 10 cts.

Geo. H. Tardy, dep'y sh'ff, being duly sworn, deposes that all the facts and allegations above stated are true and correct.

GEO. H. TARDY, *D'y Sh'ff.*

Sworn to and subscribed before me this the 3rd day of August, A. D. 1869.

[SEAL.]

M. P. JULIAN,
D'y Clerk Sup. Court State of La.

Sup. court of La.

Filed August 3rd, 1869.

M. P. JULIAN, *Dep'y Clerk.*

Brief of plaintiffs in error

Supreme Court of the United States.

A. T. STEWART & Co.
Plaintiffs in error,
vs.
BLOOM, KOHN & Co.
} In error to Supreme Court of Louisiana.

The proceedings and subject-matter of this case are simply these:

The plaintiff instituted suit by petition filed the 16th April, 1866, in one of the State courts of Louisiana, setting up therein, that they were merchants, residing and doing business in the city of New York, and that the defendants were merchants, doing business at Clinton, in the State of Louisiana; that the defendants, as such merchants, had become legally indebted to the plaintiffs in a large sum of money, for merchandise delivered by them to the defendants, for and on account of which the defendants executed and delivered to the plaintiffs, at the city of New York, under date of 10th August, 1860, payable in seven months, a promissory note for the sum of three thousand two hundred and seventy-six dollars and twenty-four cents. (See transcript of Record, p. 1.)

The defendants, being duly served with process, came into court and pleaded the statute of prescription, which, under the laws of Louisiana, is five years.

The proofs presented in the case, (see interrogatories to S. Kohn, one of the defendants, p. 6, of Record, and answers of Kohn, p. 9) show the existence

of said firm of Bloom, Kohn & Co., as merchants, doing business at Clinton, in Louisiana, on the 10th of August, 1860; and that said commercial firm was composed of S. Bloom, S. Kohn, A. Levi, and S. Adler. That Levi had resided in New Orleans long before and during the late war.

The case being submitted, the said court "*ordered, adjudged, and decreed, that there be judgment for the defendants and against plaintiffs for costs of suit.*"

It is necessary to a proper understanding of the proceedings, so far, that, it be stated, that under what is known as the Code of Practice of Louisiana, the plaintiffs were not permitted to enter a replication to the defendants' answer invoking the statute of prescription.

Article 329 of that Code declares that,

"When the defendant in his answer alleges on his part new facts, these shall be considered as denied by the plaintiff; therefore, neither replication nor rejoinder shall be admitted."

This rule of practice has been repeatedly held in Louisiana to bar all replications; so, of course, what was embraced in the defendants' answer was open to every "objection of law and fact, the same as if specially pleaded. (13 Annual Rep., 412; 3 La. Rep., 392; 12 Rob. La. Rep., 648; 11 La. Rep, 553; 8 Martin's New Series, 141.)

The plaintiffs simply denied the validity of the statute of prescription, which the defendants had invoked and thus spread upon the record in bar of their recovery. They declared that statute to have been suspended by the late civil war, which, in respect to the entire territorial limits of Louisiana, had made the plaintiffs alien enemies, and which confessedly had

made the defendants citizens of a State which had, by force of arms, undertaken to maintain a government, not only independent of the United States, but in open contempt of their civil and military authority.

The plaintiffs then appealed their case to the Supreme Court of Louisiana, and on the motion of their attorney submitted the same to the decision of that court. (Record, p. 13.)

It will be seen that the plaintiffs set up and insisted upon the interruption of prescription during a greater portion of the five years, and the act of Congress of the 11th of June, 1864, as a denial of immunity to the defendants and of power in the court to bar the plaintiffs' remedy.

The case being thus submitted, the Supreme Court of Louisiana affirmed the judgment in the court below, in these words:

"This is an action upon a promissory note.

"The defendants pleaded the prescription of five years.

"The note fell due on the 18th of March, 1861, and the citations were served on the 18th day of April, 1866.

"More than five years having elapsed after the maturity of the note before the citations were served on the defendants, the plea of prescription must be sustained.

"It is therefore ordered, adjudged, and decreed, that the judgment of the lower court be affirmed, and that the appellant pay the costs of the appeal."

The supreme court of Louisiana erred in affirming the validity of the statute of prescription which was repugnant to the Constitution and laws of the United States.

I.

We maintain that the said statute had been suspended and became inoperative, with respect to the

plaintiffs, who were residents of the State of New York, by reason of the existence of civil war between the United States and what is known as the confederate government, of which government Louisiana was a constituent State, wherein the defendant resided. That said civil war was proclaimed by the President of the United States on the 15th of April, 1861, and absolute non-intercourse by public proclamation of the President commanded between the people and civil authorities of the United States and the people and military and civil authority of the State of Louisiana, on the 16th of August, 1861. That such non-intercourse continued to the close of the war in 1865, with respect to the State of Louisiana, except in so far as the military forces of the United States had by arms subdued a small fraction of said State lying on the Mississippi river, and held it exclusively subject to the armies of the United States, until the 24th of June, 1863, when the circuit court of the United States was organized at New Orleans. That even that court was subject to the paramount authority of the military forces of the United States until the close of the war in 1865. (Wheaton, pp. 541, 546; 1 Kent, pp. 67, 68; 16 Johns. R., p. 218; Nott & McCord, 408.)

II.

That on the 11th of June, 1864, Congress enacted that when the ordinary course of judicial proceedings should be interrupted, so as to prevent the service of process in favor of persons to whom a right of civil action had accrued, the time during which such person shall be beyond the reach of such process shall not be deemed or taken as any part of the time lim-

ited by law for the commencement of such action. That this act is general, and applies to all portions of the United States, and to all courts, federal and State, whenever and wherever "the ordinary course of judicial proceedings" has been interrupted, and its duration is fixed by the act itself as "during the existence of the present rebellion." It was retroactive, as is seen in the nature of the act itself, in referring to the "interruption of judicial proceedings *by reason of resistance to the laws of the United States.*" It applies with peculiar force to Louisiana, because the people of that State had not only resisted by arms the enforcement of the Constitution and laws of the United States, but had expelled from her borders every official having authority to execute the same. This is a judicial and legal fact, being so declared by the proclamation of the President of the 15th of April and 16th of August, 1861.

III.

With respect to what is known as the State of Louisiana, and the statutes of Louisiana, we insist that up to the organization of the circuit court of the United States, on the 24th of June, 1863, they were, to all legal intents and purposes, the territory and the laws of an alien enemy. By reason whereof those laws were all suspended so far as they bore upon the people of the United States, and especially the act of prescription invoked by the defendants, because that act is a simple denial of remedy, based on the presumption that the plaintiffs had neglected to prosecute within a certain time, and was the act of a government engaged in war against the Constitution and laws of the United

States. This condition of things makes it apparent that Congress possessed the sole power to enact laws for that State. This is seen by the absolute exclusion by the State, from April, 1861 to May, 1862, of all authority of the United States by military force, and the subsequent conquest of a small portion of the State by the arms of this Government, a conquest maintained to the close of the war, years afterwards, by our military forces.

The act of the 11th of June, 1864, is a general act, and is applicable to every part of the Union, where the ordinary course of judicial proceedings may have been, or was at the date of the act, interrupted. It was evidently intended not to suspend the laws of prescription of Louisiana specially, for that had been done by the act of the State itself in waging flagrant war against the United States, but all acts of prescription of all States in respect to all persons who had engaged in the rebellion, as it is called. In this case, the defendants are seen by the record to have been residents of Louisiana. They were a part of the constituency of that State, which resisted the enforcement of the laws of the United States, and carried that resistance by arms to the extent of their exclusion and the exclusion of the authority of the Constitution from its borders.

Whatever condition of things in other parts of the country might have required proof in court on the trial of a cause proof of the interruption of the ordinary course of judicial proceedings, no such proof was required in this case in the State court, because such interruption was a great public fact, proclaimed to the world by the President of the United States; a proclamation which is embodied in the volume of our statute laws.

But it is urged in the brief of the defendants' counsel that the act of the 11th of June, 1864, was intended to apply only to the federal jurisdiction.

We answer this, that in respect to Louisiana, up to the close of the war, there was no other jurisdiction that this court could recognize. There was no State of Louisiana holding constitutional relations to this Government; and there can be no State without sustaining such relations. We have the public acts of the State denouncing her allegiance to the constitutional authority of the United States, and find those acts enforced by the hostile State over all her territorial jurisdiction by arms, in acts of war; and we find also the act of the President denouncing and forbidding all intercourse between the State and the United States. It is manifest, then, that the act of 1864 did not contemplate Louisiana as a State at all. Yet it would be folly to maintain that that act was not intended to reach and cover cases there of resistance to the laws and "the interruption of the ordinary course of judicial proceedings."

The doctrine of the defendants is, "Once a State, always a State." We oppose to this doctrine the great array of facts involved in the recent rebellion, which made Louisiana an important political element of a government, which waged a four years' war against the United States, and during all that time excluded from her borders all jurisdiction and authority of the Constitution. We oppose to it the historical and legal fact that the Congress of the United States, since the close of the war, on the motion of the people of Louisiana, have admitted them into the Union as a State, and thereby invested them with the political rights of a State under the Constitution of the United States.

The point we make is this, that by her own acts Louisiana ceased to be a State of the federation, and became a State of another government, which waged war against the United States. This position is sustained by facts, and by the acts of the legislative power of the Union. Those facts are found in the war and the local legislation of the State in support of the war; and in acts, as seen by the proclamations of the President; and, finally, in the admission of the State into the Union. These facts and acts are wholly inconsistent with the position assumed by the defendants' counsel, that the State all the while has been a member of the Union, and is therefore entitled to all the rights, privileges, and immunities of a State of the Government of the Constitution. If Louisiana was a member of the Union all the time during the war, why was she subsequently admitted into the Union? Why did she assent to such admission? Is not such assent of the State and her subsequent action to be held as sufficient and conclusive proof that she had, by her own acts and her own admission, forfeited her membership in the federal Government?

The theory set up by the defense is a simple proposition to punish political fidelity and to reward infidelity. If the hostile expulsion from the State of Louisiana of every loyal citizen of the United States did not suspend its laws of prescription, then the plaintiffs were shut out and kept out from the courts by force, and their just claims upon debtors forfeited for not coming in.

IV.

This case comes here on writ of error to the Supreme Court of Louisiana, and in obedience to the su-

thority of the second section of the act of Congress of 5th February, 1867. It will be observed that the section of the act referred to is amendatory of the twenty-fifth section of what is known as the judiciary act of 1789. It is important, in the judgment of the plaintiffs, that these two sections should be carefully considered; for, as far as we understand them, the act of 1867 *enlarges the sphere of review of this court*. We give the two sections, therefore, in parallel lines, for convenience of reference :

Judiciary Act of 1789.

"SEC. 25. *And be it further enacted*, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision is against their validity, or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of such their validity, (*d*,) or where is drawn in question the construction of any clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right, privilege or exemption specially set up or

Judiciary Act of 1867.

"SEC. 2. *And be it further enacted*, That a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity, *or where is drawn in question the validity of a statute of or an* AUTHORITY *exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States*, and *the decision is in favor of such their validity*, or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held, or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity *specially set up* or claimed by

claimed by either party, under such clause of the said Constitution, treaty, statute, or commission, may be re-examined and reversed, or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the Chief Justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a circuit court; and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may, at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. *But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the beforementioned questions of validity or construction of the said Constitution, treaties, statutes, commissions, or authorities in dispute,*" (*a.*) (1 Statu. at Large, p. 85.)

either party under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon a writ of error, the citation being signed by the chief justice, or judge, or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner, and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States; and the proceeding upon the the reversal shall also be the same, except that the Supreme Court may, at their discretion, proceed to a final decision of the same, and award execution, or remand the same to an inferior court. This act shall not apply to the case of any person who is, or may be, held in custody of the military authorities of the United States, charged with any military offense, or with having aided or abetted rebellion against the Government of the United States prior to the passage of this act." (14 Statu. at Large, p. 385.)

By the twenty-fifth section, it will be seen that the court was restricted to an examination and correction of such errors only as might appear "on the face of the record." The obvious intent and purpose of the grant of power to this court by this section was, in general terms, to enable the Supreme Court of the United States, in specified cases, to reverse the decisions of the highest courts of the State.

One of the grounds set up in the act of 1867, (the same in the act of 1789,) is to authorize a review by this court of the decision of the highest court of any State, is stated by the act itself thus:

"Where is drawn in question the *validity* of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of such their validity."

This case is brought here to correct the error of the Supreme Court of Louisiana, which affirmed the validity of the statute of prescription of that State pleaded by the defendants in bar of the plaintiffs' right to recover, which statute we maintain is repugnant to the Constitution and laws of the United States.

The question is raised by the defendants, whether the record of the proceedings in the courts of the State makes it apparent that the Supreme Court of Louisiana did decide in favor of the validity of the law of prescription?

It is obvious that, in view of the positions taken by the defendants, the legal effect of the amendatory provision of the act of 1867, should be considered. It will be seen on examination of the twenty-fifth section of the act of 1789, and the second section of the act

of 1867, that the latter is almost literally a copy of the former, down to the restriction contained in the act of 1789, that "no other error shall be assigned or regarded as a ground of reversal" "than such as appears on the face of the record."

If, then, this court is limited to an examination of what "appears on the face of the record," it is not seen how the act of 1867 is to have any effect whatever. With respect to other matters embraced in the act of 1789, they are all included in identical terms in the act of 1867. The latter undertakes to confer, in positive language, authority to this court to reverse or affirm the decisions of the State courts in certain named cases. It is an act of Congress, conferring jurisdiction upon this court; a jurisdiction, to a certain extent, previously conferred by like authority. The two acts, then, we respectfully urge, should be considered separately, and the latter be held as the controlling act, with reference to the extent of powers granted to this court. This is so, because there is no power granted by the act of 1867 which had not been granted by that of 1789. To hold, then, to the restriction in the last clause of the twenty-fifth section would, therefore, be almost exactly equivalent to declaring the act of 1867 insignificant.

There can be no doubt but that the act of 1867 is a grant of power to this court. It is positive in its language as a grant of power. It is not seen how a power thus granted, in express terms, draws to it a restriction upon its exercise contained in a previous act granting the same power.

It must be admitted that the act of 1864, *to some extent*, enlarged the jurisdiction of this court in respect to cases decided in the highest courts of the States. Now, in what respect, otherwise than by the removal

of the restriction which the last clause of the twenty-fifth section of the act of 1789 imposed, thus giving this court power to correct any error of the State court, which may be disclosed by the transcript of proceedings sent here, but which may not appear upon what is technically embraced in the record proper?

For illustration: It appears by the transcript of proceedings in this case that the defendants pleaded the statute of prescription of Louisiana, and that the court affirmed the validity of that law. The plaintiffs put in no replication, setting up the war and insisting upon the suspension of prescription thereby, and setting up the act of 1864; because, by the Code of Practice of the State they were prohibited from doing so. That prohibition is in itself an affirmation of the plaintiffs' right to insist on the trial, upon the suspension of prescription, by virtue of the President's proclamations, the war, and the act of 1864, precisely the same as if they had been pleaded in replication; and these, as will be seen by the transcript in this case, they did insist upon. Nor would a ruling of the court, on trial, in favor of prescription, and an exception, have added to the force of the plaintiffs' showing here; because we have in the final decision of the State court a distinct affirmation of the *validity* of prescription *during the whole war*.

The question, it is seen, involved simply the validity, not the construction, of a State law. The law, by its nature, was unavailable, except when invoked by defendants. It was a defendant's law, which, if it were valid, was a bar to the plaintiffs' claimed remedy. Hence it was the duty of the court, in any and every case, to determine whether it was a valid law, without any motion of the plaintiffs. The defendants might

have pleaded prescription of a repealed statute. We take it for granted it would, in that case, have been the duty of the court, in the first instance, to take notice of that fact. And in this case they were bound to take notice of the war, and give effect to the act of 1864, *which operated as a repeal of prescription*, especially in respect to Louisiana, where the legal condition of things was total non-intercourse between the plaintiffs and defendants. (16 Johns. R., 213; Wheaton, 541–546; 1 Kent, 67, 68.

Neither party, being governed by the laws of the respective States of which they were citizens, could lawfully enter the jurisdiction of the other. They were alien enemies, and so remained to the close of the war, the plaintiffs residing in New York, and the defendants residing and doing business in Clinton, Louisiana, a place within what is known as the confederate lines. These are facts which appear on the face of the record so far as residence is concerned; and so far as the war is concerned, it is a great public fact, which the Supreme Court were bound to take notice of. The question on the trial of the cause was as to the *validity* of prescription; whether that law had been suspended or made inoperative by reason of the war, which confessedly did shut out the plaintiffs from all access to the courts of Louisiana. It follows that the defendant set up in bar a suspended and invalid law.

It will be admitted that the proclamations of the President, to which we have referred, legalised, if we may so speak, non-intercourse between the plaintiffs and defendants. The act of 1864 suspended absolutely the laws of prescription of Louisiana, because that State had not only interrupted the ordinary course of judicial proceedings, the defendants being citizens of

the State, but had prohibited her people from paying a debt to a citizen of the United States. These are all judicial facts, which the Supreme Court of Louisiana were bound to take notice of in deciding upon the *validity* of a law invoked by the defendants in bar of the plaintiffs' claim.

Had we pleaded against prescription the proclamations of the President, or the act of 1864, or the existence of rebellion, and the consequent "interruption of the ordinary course of judicial proceedings," these facts, thus presented to the court, would have derived no additional weight or verification by reason of being pleaded, nor would it have been any more the duty of the court to recognize them as binding; because the question involved simply the validity of a law. The act of 1864 was a judicial fact.

From the 15th of April and the 16th of August, 1861, the dates of President Lincoln's proclamations of non-intercourse with Louisiana, all judicial proceedings and all statutes of that State involving the execution of any laws affecting citizens of the United States became void. To all legal intents and purposes war existed between the United States and Louisiana. Subsequent events have made it impossible to question the legality or propriety of the exercise of executive authority on those occasions.

The act of 1864 was not *necessary* to secure to these plaintiffs exemption from the operation of the act of Louisiana invoked by the defendants. That State had not only raised the standards of rebellion, but had actually and successfully resisted the enforcement of *all* federal laws. Its legislative authority had made it a penal offense for its citizens to pay a debt to a citizen of any State not in rebellion against the United States.

This was war; and war, in the judgment of this court, we doubt not, will be held to operate *ipso facto* as the suspension of all laws of the State which affect the rights of loyal citizens of the United States, whether at the time in or out of the State of Louisiana. The act of 1864 simply declared such suspension, without invalidating the force of general principles which are to be deduced from the condition of public affairs referred to.

S. M. JOHNSON,
Counsel for Stewart & Co.

This was war; and war, in the judgment of this court, we doubt not, will be held to operate *ipso facto* as the suspension of all laws of the State which affect the rights of loyal citizens of the United States, whether at the time in or out of the State of Louisiana. The act of 1864 simply declared such suspension, without invalidating the force of general principles which are to be deduced from the condition of public affairs referred to.

S. M. Johnson,
Counsel for Stewart & Co.

Supreme Court of the United States.

No. 272.

A. T. STEWART & CO.

versus

BLOOM, KAHN & CO.

BRIEF OF A. LEVI, DEFENDANT IN ERROR.

On Motion to Dismiss.

It is hardly necessary to say, that the brief of counsel in the lower court has been improperly copied in the Record. Briefs and arguments form no part of the Record.

There is nothing of Record to show that, any question respecting the statute of limitations of the United States of June 11th, 1864, was raised or relied upon before the Supreme Court of Louisiana, as a ground of recovery. See Midberry et al. vs. The State of Ohio, 24 Howard, 413. The act of 5th February, 1867, (2d section,) must be construed with 25th section of the Judiciary, the act of 1789; and there is nothing in either, it is respectfully submitted, which

contemplates that a writ of error can be maintained for any other matter or thing than that shown by the Record. It was not the intention of Congress to create any new mode of trying cases in error.

As upon a petition for a re-hearing, the courts of Louisiana do not pass upon new questions raised by counsel, the refusal of an application for a re-hearing proves nothing. Sobe vs. Merchants' Insurance Co., 6 Louis, R. 193; Rightor vs. Phelps, 1 Rob. R. 330; Succession of Broom, 14 Ann. 67.

We do not feel disposed to deny that the second section of the act of 5th of February, 1867, is broader in its language than the 25th section of the judiciary act, and that it may have been intended to enlarge somewhat the jurisdictionof the Supreme Court of the United States. Nevertheless it must be construed, as just said, with that section.

But, if we concede that it need not now appear *by the Record itself*, that the question on which the opinion of this court is asked, *was expressly raised and considered* in the lower court, and that this court now, may consider the question if it necessarily arises upon the Record, although not considered, or even if evaded by the lower court; still, it does not appear to us that the question attempted to be raised by counsel, for the plaintiff in error is necessarily presented for consideration befor; this court, by the Record in this case.

So far as *the Record* (aside from the evidence) is concerned, the defendant may have resided in New

York, or the plaintiffs in New Orleans during the entire period of the war. The personal knowledge which your Honors may have of one or all the parties, cannot supply the want of the appearance of the important fact in the Record, established by a bill of exceptions.

If the writ is to have the same effect under the act of 1867, "as if the judgment or decree complained of had been rendered or passed in a court of the United States," it will not benefit the case of the plaintiffs in error, because if this case had been tried in the Circuit Court of the United States, in the absence of bills of exception, there is nothing on which, to base an examination of the question, and much less to reverse the judgment of the lower court.

On the Merits if motion to dismiss should be overruled.

The act of Congress of June 11th, 1864, in relation to the limitation of certain actions, only binds the courts of the United States. 13 Stet. 123.

There is no grant of power in the Constitution of the United States to Congress, to prescribe rules of property, or practice for the governmnet of the courts of the several States. *Qoad*—the matters not intrusted to the government of the United States, the State Courts are considered as courts of another sovereignty. Ableman v. Booth, 21 A 516. As Congress cannot create the State courts, as it cannot establish the ordinary rules of property, obligations and contracts, nor in general,

denounce penalties for crimes and offences, in the several States, it cannot prescribe rules of proceeding for such State courts.

On the other hand, there is no inhibition in the Constitution of the United States, upon the individual States to pass statutes of limitation even where such statutes of limitation bar the judgments of sister States.

See McElmoyle vs. Cohen, 13 Peters, R. 328.

It therefore, necessarily appears, that Congress never intended by the act of June 11th. 1864, (13 Statutes at Large, p. 123,) to legislate for the several states.

The mere reading of the act shows that Congress was legislating for the courts and officers of the United States, over which it has jurisdiction. It suspended the statutes of limitation, in the cases given, both as to crimes and civil actions. Could a State bring a writ of error to this court, to reverse a judgment of its own courts, which should hold that a criminal offence, or penal action, was barred by the statute of limitation, notwithstanding the impossibility of summoning or arresting the offender, for the cause assigned in the statue? It is manifest on the very face of the act, that Congress did not intend to make any such regulation for the individual States.

If it did not, how can the statute be held to be a rule of right for the courts of the several States?

The Statute of Louisiana, enforced in this case, has been on the Statute Book for forty-five years, and

receives the like interpretation for citizens and strangers. It has been interpreted in former times, as subject to exceptions it is true, but the interpretation, whatever it has been, has received a uniform application. Smith vs. Stewart, 21 Ann R. 67. Jacquet vs. Webb, Levert & Co. 22 Ann. 111. The present bench of Lousiana have followed the interpretation of a distinguished French jurist, in preference to the conclusions of their predecessors. The decisions they have made are the laws of the *forum*. The plaintiffs in error, (conceding their citizenship,) had their choice of tribunals, either those of the State or the nation. We had no voice in the matter. They selected the former as most advantageous to them, and lost. The result might have been the same in the United States Courts, with different rules of limitation, but whether so or not, we are not responsible for consequences.

Statutes of limitation and prescription are considered as mere directions to the *forum* what kind of actions to hear and what are to be dismissed. They have never been considered as barring the right and are always construed as affecting the remedy. And in this respect there is no difference as to statutes of limitations and prescriptions, *liberandi causa*, between the common and civil law. A claim barred in one State or Country may be inforced in another State or Country where the laws as to the times of limitation are different.

McCluney vs Silliman, 3 Pet. R. 270;

Supreme Court of the United States.

A. T. STEWART & CO., PLAINTIFFS IN ERROR,

versus

BLOOM, KAHN & CO., DEFENDANTS.

SUPPLEMENTAL BRIEF.

It is said in the brief for the plaintiffs in error, that the law of Louisiana does not admit of a replication nor rejoinder, and their counsel, therefore, would have this court infer that the act of Congress of 1864 was relied on in the State courts, as a defence to the plea of prescription under the law of Louisiana.

It is true, the act of Congress, under a given state of facts, might have been relied on, had plaintiffs' counsel thought it advisable to insist on the same. But the writer of this brief has no recollection that it was relied on in the District Court, though it might have been, perhaps, casually alluded to in the brief trial of the case in that court. If such had been the intention of the counsel, viz.: to rely on the act of Congress, proof of A. T. Stewart & Co.'s domicil during

the war would doubtless have been made, as well as the condition of the courts of New Orleans.

So far from making the requisite proof and relying on the act of Congress, it was not even alluded to in the motion for a new trial; wherein, instead of saying that the *act of Congress* suspended prescription, plaintiffs' counsel assumes the doctrine maintained by many of the Louisiana bar at that time, "that the pendency of the war suspended the operation of the law relating to prescription," as it had previously been held in Louisiana and some other civil law countries.

There are various modes by which the question might have been raised upon *the record*, for the consideration of the court *a qua*.

1st. The act of Congress might have been set up as part of the pleadings in the plaintiffs' petition (or by way of amendment thereto), as relieving the case from the operation of the Louisiana laws of prescription.—C. P. 419.

Or, 2d. The case might have been tried by jury; for we suppose the PLAINTIFF would always have the right to ask for a jury, notwithstanding the act of 1839, which was intended to prevent delays on the part of the defendant.—C. P. 494.

3d. An assignment of errors before the Supreme Court of the State, under the law of Louisiana (Code of Practice, 897), might have been made.

And 4th. The plaintiff could have asked the Su-

preme Court of Louisiana for a certificate showing that the act of Congress of 1864 was drawn in question, etc.—Medbury vs. Ohio, 24 Howard, 413, 415.

And we may also remark, that plaintiffs had the right to bring their suit in the United States Circuit Court, where, unquestionably, they might have cited the act of Congress as the law of that court.

The plaintiffs in error not only did not make the question they now rely upon a part of the case upon the record in the court below, but they did not (as just said) administer the necessary proof to defeat the plea of prescription, under their present view of the law of the case. They should have proven their residence to have been in New York, or some loyal State, or other country, during the war; for we presume if they had resided in New Orleans during the war, or in other parts of the Confederacy (so called), they could not invoke the aid of the act of Congress, for the reason that the courts of the States in rebellion would have been open to them.

We have already said in a former brief (filed both on the motion and on the merits) that the brief of counsel forms no part of the record, and was improperly copied into the transcript of record in this case. The petition for a rehearing is also nothing but an argument. There is, therefore, nothing before the court, we think, which it can examine, or which can give it jurisdiction. See Taylor vs. Morton, 2 Black, 483; National Bank vs. Commonwealth, 9 Wal. 363; Worthy vs. Commissioners, 9 Wal. 611.

Supreme Court of the United States.

A. T. STEWART & Co.,
Plaintiffs in Error,
vs.
BLOOM, KAHN & Co.
} Error to Supreme Court of Louisiana.

Motion to dismiss writ of error:

(1) Because the record does not show any question of law or right over which this court has jurisdiction.

(2) Because no question of right was raised by the petition, answer, or pleas in the courts below, there being no bills of exceptions on file or *other proceedings forming a part of the record*, by which this court can have certain knowledge of what questions were raised by said State courts.

THE RECORD SHOWS:

I. That these proceedings were commenced in one of the district courts of Louisiana, on a promissory note of defendants, which fell due and was protested for non-payment, on the 13th of March, 1861; that the citation was served on the 18th of April, 1866.

II. That the defendant, Levy, who presses this motion, filed his answer on the 28th of April, 1866, and says he "knows nothing about the said promissory note," but if it exists, and is valid, then he "pleads the prescription of five years thereto."

III. That the supreme court of Louisiana, in its final judgment, sustained the said plea of prescription of the defendants, and thereby declared the statute of prescription of the

State to be valid as against the plaintiffs' remedy and right of recovery in this case, which decision is spread upon the record, and is as certain and complete in respect to the validity of said statute as if the plaintiffs had denied such validity by replication to the defendants' answer.

IV. That on the 28th of April, 1869, (see p. 15 of printed record,) the plaintiffs filed a petition in the supreme court of Louisiana for a rehearing of the case, and, among other things, set up:

"That they mainly relied upon the act of Congress entitled 'An act in relation to the limitation of certain actions,' approved June 11, 1864, as a complete answer to the plea of prescription set up by the defendants." Which petition for rehearing also declares that the plaintiffs had filed a written brief in the said district court, which the rules of that court required them to file, setting out the said act of 1864. This petition constitutes a part of this record. (See p. 15, record.)

V. That the act of Congress of 1864 is a general act, which *is applicable to every person* whose right of action in the courts had accrued against any one "who, by reason of resistance to the execution of the laws of the United States, or the interruption of the *ordinary course of judicial proceedings*, cannot be served with process." That the public and recognized character of the rebellion, as declared in the proclamations of non-intercourse by the President of the United States, on the 15th of April and 16th of August, 1861, establish the fact of general resistance to the execution of the laws and the total interruption and suspension of "the ordinary course of judicial proceedings" in the State of Louisiana, and thereby the suspension of the laws of prescription of that State with respect to these plaintiffs.

VI. All general laws which affect parties to judicial proceedings constitute a part of the record of each case without being specially pleaded.

THE CODE OF PRACTICE OF LOUISIANA.

Article 329 of this Code declares that:

"When the defendant in his answer alleges on his part

new facts, these shall be considered as denied by the plaintiff; therefore neither replication nor rejoinder shall be admitted."

The courts of Louisiana have repeatedly decided that "replications are not permitted under our law, and so all obligations in the answer are open to every objection of law and fact as if specially pleaded." (13 Annual Reports, 412; 3 La. Rep., 392; 5 A. R., 291; 12 Robinson's La. Rep., 648; 9 Rep., 504: 1 R., 335; 11 La. Rep., 553; 5 L., 1; 8 Martin's new series, 141; 4 L. & R., 339.)

The plaintiffs had a right to urge any denial whatever to the plea of prescription of the defendants, the same as if it had been set up in replication.

The statute of prescription must be pleaded, because the law itself makes it optional to invoke it or not; but the question whether such statute is in force or has been suspended, or whether it exists at all or not, may be raised by the plaintiff, without spreading upon the record his grounds of objection.

Had the defendants in this case pleaded prescription under a repealed statute, would the failure of the plaintiffs to set up the law of repeal have justified the court in denying remedy to the latter? What were we required to do in the court below, that we might, with certainty, have raised an issue upon the validity of the law of prescription, which is not embodied in this record, and which has not been raised and decided by the supreme court of Louisiana? The defendants pleaded a law of that State, and it was clearly the duty of the court to decide upon the validity of that law. They did decide that it was valid, when confessedly it was not valid. That was their error, and it was an error which deprived us of essential rights, the enforcement of which we had invoked in the courts of Louisiana, and which we are here to insist upon. Had we pleaded against prescription the proclamations of the President, or the act of 1864, or the existence

of rebellion, and the consequent "interruption of the ordinary course of judicial administration," these facts, thus presented to the court, would have derived no additional weight or verification by reason of being pleaded, nor would it have been any more the duty of the court to recognize them as binding because they had been so pleaded. The act of 1864 was a judicial fact. The proclamations of the President were judicial facts. The war was a judicial fact.

From the 15th of April and the 16th of August, 1861, the dates of President Lincoln's proclamations of non-intercourse with Louisiana, all judicial proceedings and all statutes of that State involving the execution of any laws affecting citizens of the United States became void. To all legal intents and purposes war existed between the United States and Louisiana. Subsequent events have made it impossible to question the legality or propriety of the exercise of executive authority on that occasion.

The act of 1864 was not *necessary* to secure to these plaintiffs exemption from the operation of the act of Louisiana invoked by the defendants. That State had not only raised the standards of rebellion, but had actually and successfully resisted the enforcement of *all* federal laws. Its legislative authority had made it a penal offense for its citizens to pay a debt to a citizen of any State not in rebellion against the United States. This was war, and war, in the judgment of this court, we doubt not, will be held to operate *ipso facto* as the suspension of all laws of the State which affect the rights of loyal citizens of the United States, whether at the time in or out of the State of Louisiana. The act of 1864 simply declared such suspension, without invalidating the force of general principles, which are to be deduced from the condition of public affairs referred to.

Independent of the act of 1864 and the proclamations of the President, prescription was suspended during the war. (Wheaton, pp. 541, 546; 1 Kent, pp. 67, 68; 16 Johns. R., p. 213; Nott & McCord, 408.)

What the defendant pleaded then was a suspended and inoperative statute.

NOW, WHAT DID THE COURT DECIDE?

The record answers: "More than five years having elapsed after the maturity of the note before the citations were served on the defendants, the plea of prescription must be sustained." (See p. 14 printed record.)

The exact time which these "more than five years" cover is thus stated by the court to be, from the 18th of March, 1861, to the 18th of April, 1866, being five years and thirty-six days. This decision is certain and explicit in respect to the whole time covered by the rebellion, and is a part, and a *vital part, of the record.* It is a decision, in the language of the act of 1864, "against the validity of a statute" and against "authority exercised under the United States." It is a decision "affirming and enforcing" the "validity of a statute of, or an authority exercised under," the State of Louisiana, which is "repugnant to the laws of the United States." It is a denial, not only of judicial remedies to the plaintiff, but assumes to absolve the defendants from all legal obligations to pay them.

THE ACTS OF 1789 AND 1867.

This proceeding in error is instituted under the 2d section of the act of the 5th February, 1867, which is in addition to and amendatory of the judiciary act of 1789.

The act of 1867 makes a material change in the law of 1789. All that part of the last-named act which required that the matters involved in the case must have been discussed and decided upon in the lower court, and *must appear of record*, is omitted in the act of 1867.

That this omission was intentional, and was regarded as vital, is manifest by a comparison of the two acts. That of 1867 is a *verbatim* copy of the previous act, with the exception of the omission referred to. The act of 1789 requires, in other words, that all legal questions, involving the rights of parties, *shall appear of record.* The act of 1867, upon which this proceeding is instituted, leaves the court to determine

whether error was committed by the court below, without being restricted at all to the matters set up in the petition, answer, and pleas in the case.

Under the peculiar practice of Louisiana, it is made next to impossible to raise in the pleadings constitutional or legal questions. The defendants in this case pleaded prescription; and the rules of practice inform the plaintiffs not only that such plea "shall be considered as denied," but that neither replication nor rejoinder "shall be admitted." Nor is that rule of practice unreasonable. What was pleaded was a law of the State in bar of the plaintiffs' claimed remedy and their right to recover; and it was but reasonable to conclude, as the practice of the courts had determined it should be, that the plaintiffs denied the validity of said State law. It was the unquestioned duty of the court, in view of the facts of the war and of the act of 1864, whether the plaintiffs had or not invoked those events and that act in their behalf, to decide upon the validity of the law under which the defendants had pleaded prescription.

The decision in Worthy *vs.* The Commissioner (9 Wallace, 611) is no authority in this case, because the court distinctly declare in the former case that there is no decision of the supreme court of North Carolina "in favor of the validity of a statute of, or authority exercised under, a State, and alleged to be repugnant to the Constitution, treaties, or laws of the United States; whereas in this case the defendants set up in their answer a statute of the State of Louisiana, which is repugnant to a statute and laws of the United States; and the supreme court of Louisiana decided in favor of the validity of that statute.

By the act of 1867 it is not necessary that it shall *appear of record* that questions were raised and decided in the State courts. It is sufficient that the right *is*, not that it *has been*, claimed under the laws of the United States. The requirement, that questions raised shall appear of record under the act of 1789, was intentionally omitted from the act of 1867, to meet the contingency of a case like this, where the State judges manifestly intended to defeat an appeal to this court by refusal

to notice the questions raised in the pleadings. This is seen by reference to the decision in this case by the district court, viz: "The court, considering the law, pleadings, evidence, and argument of counsel, ordered, adjudged and decreed, that there be judgment in favor of defendants." This judgment, it must be borne in mind, was rendered on a plea of prescription by the defendants, but is silent upon that point and every other.

Such a decision, it is true, could not suppress the record, or any part of it, but it did suppress every fact which entered into the minds of the court in making it, so as to leave all parties in doubt as to what was actually decided. This omission, however, of the district court is covered by final decision in the Supreme Court, which distinctly sustains the act of prescription and the plea of prescription of the defendants. The inference, too, from the judgment of the latter court, as it was entered upon the record, is, that the court determined that the war, the acts of Congress, and executive action, could not suspend the operation of a statute of the State of Louisiana. The question presented in the court below was: Is the statute of prescription set up in the answer of the defendants a valid law? That statute was the sole ground of defense, and the court declared it to be valid, and entered judgment accordingly. That was error; and it is essential, certain, and unquestionable.

S. M. JOHNSON,
Counsel for Plaintiffs.